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Insurance Corporation as Receiver

for Washington Mutual Bank

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION**

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
WASHINGTON MUTUAL BANK,

Plaintiff,

vs.

CTX MORTGAGE COMPANY, LLC;  
and PULTE MORTGAGE, LLC

Defendants.

Case No.

**COMPLAINT FOR CONTRACTUAL  
INDEMNITY**

COMPLAINT

## **INTRODUCTION**

1  
2       1. Pursuant to written agreements, defendant CTX Mortgage Company,  
3 LLC (“CTX”), brokered mortgage loans for Washington Mutual Bank and/or its  
4 subsidiaries, including Long Beach Mortgage Company (collectively, “WaMu”). As  
5 part of the agreements, CTX promised to indemnify WaMu for any losses arising  
6 either directly or indirectly, or in any way as a result of any inaccurate or incomplete  
7 application or other documentation prepared by or at the direction of CTX, or which  
8 in any way arise out of or relate to an alleged act or omission by CTX in connection  
9 with, among other things, an applicant, an application package, or a mortgage loan.

10       2. During the relevant time period when CTX contracted with and brokered  
11 loans to WaMu, CTX operated as the financial services subsidiary of Centex  
12 Corporation (“Centex”), a homebuilder. On August 18, 2009, Centex merged with a  
13 subsidiary of Pulte Homes, Inc. (“Pulte”), another homebuilder, and became a wholly-  
14 owned subsidiary of Pulte. Pulte in turn had its own mortgage financing subsidiary,  
15 Pulte Mortgage, LLC (“Pulte Mortgage”).

16       3. On information and belief, after Pulte and Centex merged, Pulte  
17 transitioned the assets of CTX to Pulte Mortgage and Pulte Mortgage assumed the  
18 liabilities of CTX, including the liabilities alleged herein. As a result, Pulte Mortgage  
19 is legally responsible for the damages arising from the claims in this lawsuit against  
20 CTX. CTX and Pulte Mortgage may be referred to herein collectively as  
21 “Defendants.”

22       4. After WaMu funded the loans from CTX, WaMu sold CTX-brokered  
23 loans into residential mortgage-backed securitized trusts (“RMBS Trusts”) for which  
24 Deutsche Bank National Trust Company served as trustee (“Trustee”). The Trustee  
25 ultimately asserted claims that it suffered losses because of defective loans sold into  
26 the RMBS Trusts, including at least twenty-four (24) mortgage loans brokered by  
27 CTX (“CTX Defective Loans”).  
28

1           5.     Plaintiff Federal Deposit Insurance Corporation as Receiver for WaMu  
2 (“FDIC-R” or “Plaintiff”) incurred losses settling the Trustee’s claims. FDIC-R’s  
3 losses arose out of and/or related to CTX’s provision of inaccurate or incomplete loan  
4 applications or other documentation prepared by or at the direction of CTX and CTX’s  
5 acts or omissions in connection with applicants, application packages, and mortgage  
6 loans including, *inter alia*, CTX’s submission of loan applications and documentation  
7 that misrepresented such things as the borrowers’ credit histories, employment status,  
8 income, or occupancy status.

9           6.     FDIC-R demanded that CTX honor its written contractual  
10 indemnification obligation, and Pulte Mortgage has notice of this demand. Because  
11 Defendants have not honored their obligations, FDIC-R brings this action as successor  
12 to WaMu’s rights, titles, powers, and privileges.

13                   **PARTIES, JURISDICTION, AND VENUE**

14           7.     The Federal Deposit Insurance Corporation is an instrumentality of the  
15 United States and is organized and exists under the laws of the United States. 12  
16 U.S.C. §§ 1811, 1821(d). Pursuant to 12 U.S.C. § 1821(d)(2), FDIC-R succeeded to  
17 all rights, titles, powers, and privileges of WaMu and of any stockholder, member,  
18 account holder, depositor, officer, or director of WaMu with respect to the bank and  
19 its assets. FDIC-R brings this action in its capacity as the duly appointed receiver of  
20 WaMu, which the Office of Thrift Supervision closed on September 25, 2008,  
21 appointing FDIC as Receiver for WaMu that same day.

22           8.     CTX is a Delaware limited liability company with its principal place of  
23 business at 7390 South Iola Street, Englewood, CO 80112. At all relevant times, CTX  
24 was registered and licensed to do business in California.

25           9.     Pulte Mortgage is a Delaware limited liability company with its principal  
26 place of business at 7390 South Iola Street, Englewood, CO 80112. Pulte Mortgage  
27 is registered and licensed to do business in California and transacts business from a  
28 branch office in Mission Viejo, California.

1           10. As noted in Pulte's public securities filings for the fiscal year ending  
2 December 31, 2009, "[a]s of December 31, 2009 we had transitioned all of CTX['s] .  
3 . . . loan origination production to Pulte Mortgage."

4           11. As noted in Pulte's public securities filings for the fiscal year ending  
5 December 31, 2010 "we entered into an agreement in conjunction with the wind down  
6 of Centex's mortgage operations, which originated its last loan in December 2009,  
7 that provides a guaranty for one major investor in loans originated by Centex's  
8 mortgage operations." On information and belief, this guaranty pertains to liabilities  
9 associated with CTX's breaches of representations and warranties for CTX-originated  
10 loans.

11           12. Accordingly, on information and belief, Pulte Mortgage expressly or  
12 impliedly assumed the liabilities of CTX, including those related to the CTX  
13 Defective Loans.

14           13. This Court has subject-matter jurisdiction pursuant to 12 U.S.C.  
15 § 1819(b)(1) and (2) and 28 U.S.C. §§ 1331 and 1345.

16           14. CTX contractually agreed to venue in this district. *See* 2004 Mortgage  
17 Broker Agreement, ¶ 21, attached hereto as Exhibit 1. Venue is also proper in this  
18 district pursuant to 28 U.S.C § 1391 because Pulte Mortgage resides in this district in  
19 that it transacts business from its branch office in Mission Viejo, California.  
20 Additionally, venue is proper in this district pursuant to 28 U.S.C § 1391 because a  
21 substantial part of the events or omissions giving rise to this claim occurred in this  
22 judicial district because, among other things, the contractual business relationship was  
23 entered into by WaMu in this district and the place of performance for all or some of  
24 the obligations sued upon was in this district.

25                           **FACTUAL ALLEGATIONS**

26           15. WaMu was a federal savings bank that, directly or through affiliates  
27 and/or subsidiaries, among other things, purchased, funded, and sold mortgage loans  
28 to investment trusts that packaged loans into securities for investors, which are

1 generally known as residential mortgage-backed securities.

2 16. On information and belief, CTX engaged in the business of brokering,  
3 originating, processing, packaging, submitting for funding, selling and/or transferring  
4 loans secured by real property.

5 **A. CTX's Contractual Obligations**

6 17. CTX and WaMu had a contractual business relationship, governed by  
7 mortgage broker agreements, including the 2004 Mortgage Broker Agreement ("2004  
8 Agreement") and 2005 Mortgage Broker Agreement ("2005 Agreement")  
9 (collectively, the "Agreements") attached hereto as Exhibits 1 and 2, respectively.

10 18. CTX agreed that it would prepare, package, and submit loan applications  
11 on behalf of loan applicant borrowers seeking WaMu loans. CTX was responsible  
12 for, among other things, representing loan applicants in locating lenders; interacting  
13 directly with and interviewing the borrower, counseling and assisting the borrower in  
14 the financing process; choosing the loan product with the borrower; collecting  
15 relevant information and documentation in support of the loan application; preparing  
16 the loan application and submission package; and submitting the completed loan  
17 package to WaMu.

18 19. CTX was compensated for any loans funded by WaMu, including the  
19 CTX Defective Loans.

20 20. Pursuant to the Agreements, CTX expressly agreed to indemnify WaMu  
21 as follows:

22 [CTX] will indemnify, defend and hold [WaMu] . . . harmless from any  
23 and all costs, claims, charges, actions, causes of action, losses or  
24 liability arising either directly or indirectly, regardless of any  
25 indemnitee's negligence, by reason of [CTX's] negligence, a breach of  
26 the terms or conditions of this Agreement, or in any way as a result of  
27 an inaccurate or incomplete application or other documentation  
28 prepared by or at the direction of [CTX]. (2004 Agreement).

1 [CTX] agrees to indemnify, hold harmless, and defend [WaMu] . . .  
2 from and against any and all losses, claims, demands, damages,  
3 expenses or costs (including, but not limited to, reasonable attorneys'  
4 fees and costs incurred by [WaMu], with or without suit) which in any  
5 way arise out of or relate to an alleged act or omission of [CTX] . . . in  
6 connection with an Applicant, an Application Package, a Mortgage  
7 Loan, or this Agreement. (2005 Agreement).

## 6 **B. The CTX Defective Loans**

7 21. Pursuant to the Agreements, CTX brokered the 24 CTX Defective Loans  
8 summarized on Exhibit 3, which is incorporated by reference and attached hereto.

9 22. As noted above and set forth in more detail below, the Trustee asserted  
10 claims against FDIC-R based on alleged breaches of WaMu's representations and  
11 obligations concerning the quality and characteristics of the loans, the borrowers, and  
12 the collateral on certain loans sold into the RMBS Trusts, including the CTX  
13 Defective Loans. Accordingly, FDIC-R incurred losses in connection with the CTX  
14 Defective Loans.

15 23. The CTX Defective Loans contained inaccurate and incomplete loan  
16 applications or other documentation because of misrepresentations in the application  
17 materials, including but not limited to misrepresentations relating to the quality and  
18 characteristics of the loans, the borrowers, and the collateral.

19 24. As an example, the loan applications and documents for borrowers RP  
20 and MP contained deficiencies, inaccuracies, and material misrepresentations. CTX  
21 prepared and submitted loan applications and documents for RP and MP that  
22 misrepresented their combined monthly income as approximately \$13,380. In fact,  
23 RP and MP's actual combined monthly income, as reflected on their actual tax returns,  
24 was only \$6,900 per month. Accordingly, among other things, RP and MP's loan  
25 applications misrepresented RP and MP's capacity to repay the loans.

26 25. As another example, in support of the borrower's credit history, CTX  
27 prepared and submitted the loan application and documents for AD that failed to  
28 disclose that AD had incurred \$176,000 in mortgage debt on another property

1 purchased from the same seller one week prior to the funding of the subject loan.  
2 Accordingly, among other things, the loan application misrepresented AD's credit and  
3 capacity to repay the loan.

4 26. Taken together, the 24 CTX Defective loans include, *inter alia*, loans  
5 with undisclosed and/or misrepresented mortgage loan obligations, loans with false  
6 or misleading rental histories, loans with false employment histories, loans with  
7 inaccurate appraisals, loans with false occupancy representations and certifications,  
8 and loans with misrepresented sales transactions.

9 **C. WaMu's Sale of the CTX Defective Loans to the RMBS Trusts**

10 27. After WaMu funded the CTX Defective Loans, WaMu sold each of them  
11 to the RMBS Trusts.

12 28. In connection with such sales, and in reliance on the materials,  
13 representations, obligations, and remedies CTX provided to WaMu, WaMu provided  
14 representations, obligations, and remedies to the RMBS Trusts regarding the quality  
15 and characteristics of the loans, the borrowers, and the collateral. With respect to  
16 defective loans, WaMu was liable to the RMBS Trusts, *inter alia*, where there was a  
17 material misrepresentation or omission in a loan application or other supporting  
18 documentation.

19 **D. The Trustee Action and FDIC-R's Settlement with Trustee**

20 29. After WaMu failed, on December 30, 2008, the Trustee filed a proof of  
21 claim with FDIC-R asserting that WaMu breached representations and warranties in  
22 connection with the loans sold to various RMBS Trusts. On August 26, 2009, Trustee  
23 filed a lawsuit in the District Court for the District of Columbia against FDIC-R for  
24 losses resulting from such loans that WaMu sold to the RMBS Trusts, including the  
25 CTX Defective Loans.

26 30. FDIC-R defended itself against the claims in the Trustee's lawsuit and  
27 eventually settled with the Trustee.  
28



1           31. Pursuant to a settlement agreement with an effective date no earlier than  
2 September 5, 2017, FDIC-R and the Trustee settled claims against FDIC-R, including  
3 representation and warranty breach claims arising out of or relating to the CTX  
4 Defective Loans. On September 5, 2017, FDIC-R paid the \$3,006,929,660  
5 Receivership Certificate to the Trustee in settlement of Trustee's claims, including  
6 claims on the CTX Defective Loans. Settlement of the Trustee's claims for that court  
7 approved amount was objectively reasonable. FDIC-R's indemnification claims are  
8 timely because they are brought within six years of the date of accrual. 12 U.S.C. §  
9 1821(d)(14).

10           32. FDIC-R was liable for the losses due to breaches of WaMu's  
11 representations and obligations concerning the quality and characteristics of the loans,  
12 the borrowers, and the collateral on certain loans sold into the RMBS Trusts, which  
13 loans included the CTX Defective Loans. The Trustee asserted that FDIC-R was  
14 contractually responsible for breaches of representations and warranties including,  
15 *inter alia*: misrepresentations, negligence, or fraud that occurred in the origination of  
16 the loan; misrepresentations of income; and loan-to-value ratios that exceeded 100  
17 percent. Given CTX's role and conduct in connection with the CTX Defective Loans,  
18 including CTX's relationship to the borrowers and its preparation, gathering, and  
19 submission of loan applications and documentation, FDIC-R's liability and loss to the  
20 Trustee arose out of or related to CTX's provision of inaccurate or incomplete loan  
21 applications or other documentation prepared by or at the direction of CTX, and to  
22 CTX's acts or omissions in connection with applicants, application packages, and  
23 mortgage loans.

24           **E. CTX's Breach of the Indemnification Obligations**

25           33. On October 14, 2021, FDIC-R sent a demand letter to CTX seeking  
26 indemnification for its losses arising out of and/or related to CTX's submission of  
27 inaccurate or incomplete loan applications or other documentation in connection with  
28 the CTX Defective Loans. Pulte Mortgage has notice of the indemnification demand.



1 Neither CTX nor Pulte Mortgage honored their obligation to indemnify under the  
2 Agreements.

3 34. The Agreements provides that the prevailing party in any action to  
4 enforce it may recover its reasonable attorneys' fees. In order to enforce FDIC-R's  
5 rights under the Agreements, FDIC-R has retained outside counsel and agreed to pay  
6 reasonable attorneys' fees. In addition, FDIC-R has assigned in-house counsel to  
7 assist in actively preparing to bring this case to trial.

8 35. All conditions precedent to the relief sought in this action have been  
9 fulfilled.

10 **CLAIM FOR RELIEF**

11 **(Contractual Indemnification)**

12 36. Plaintiff FDIC-R incorporates by reference the allegations set forth  
13 above as though set forth fully herein.

14 37. The Agreements are valid and enforceable contracts.

15 38. Plaintiff substantially performed all its obligations under the  
16 Agreements.

17 39. FDIC-R is entitled to indemnification from Defendants for losses and  
18 liabilities that FDIC-R suffered settling the Trustee's claims, arising out of the  
19 inaccurate or incomplete applications or other documentation prepared by or at the  
20 direction of CTX, and out of CTX's acts or omissions in connection with applicants,  
21 application packages, and mortgage loans, in connection with the CTX Defective  
22 Loans.

23 40. Defendants breached their obligations to indemnify FDIC-R, resulting in  
24 damage to FDIC-R in an amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff FDIC-R respectfully requests that it be granted:

- A. A judgment against Defendants CTX and Pulte Mortgage in an amount to be proven at trial for their breach of their indemnification obligations;
- B. Pre-judgment interest under 12 U.S.C. § 1821(l) or applicable state law;
- C. Reasonable attorneys' fees;
- D. Costs and expenses; and
- E. Any other relief as the Court deems just and proper.

DATED: August 28, 2023

MARK MIGDAL & HAYDEN

By: /s/ Paul A. Levin

Paul A. Levin

DATED: August 28, 2023

MORTGAGE RECOVERY LAW GROUP,  
LLP

By: /s/ Michael H. Delbick

Michael H. Delbick

DATED: August 28, 2023

FEDERAL DEPOSIT INSURANCE  
CORPORATION

By: /s/ Joshua H. Packman

Joshua H. Packman (to seek admission to pro  
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